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No. 194

Supreme Court of the United States

OCTOBER TERM, 1945

J. FORT ABELL, ET AL.,

Petitioners,

v.

A. M. ANDERSON, Receiver of the National
Bank of Kentucky,

Respondent.

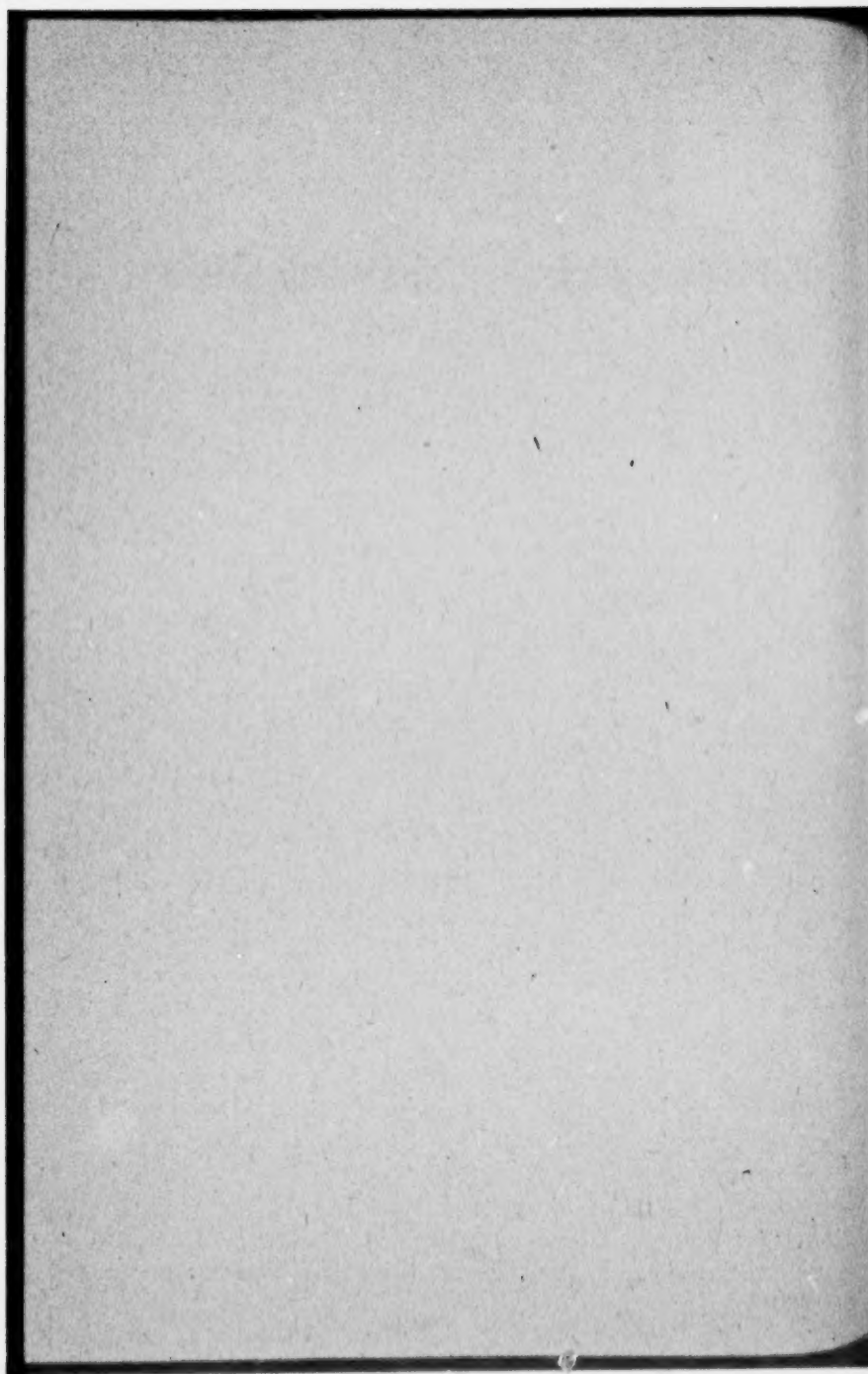
BRIEF OF RESPONDENT OPPOSING THE GRANTING OF PETITION FOR WRIT OF CERTIORARI

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This case presents a very narrow legal question, namely:
“*Does a national bank stock assessment bear interest from
its due date until it is paid?*”

The District Court, and the Sixth Circuit Court of Appeals in a unanimous opinion, answered this question in the affirmative. The appellants, a few die-hards out of several thousand stockholders, contend that an assessment levied by the Comptroller of the Currency upon the shares of an insolvent national bank does not bear interest.

Petitioners urge that the decision of the Sixth Circuit is “in conflict” with decisions of other circuits, and that it is “in conflict” with the decisions of this court. These two “reasons” urged are without merit. There are no con-

flicting decisions in any of the other circuits. On this point petitioners have cited no decisions and we challenge them to cite a single decision of any court in conflict.

It is difficult to understand how petitioners can contend, in this court, that the decision of the Sixth Circuit is in conflict with the decisions of this court in view of the fact that this court has twice decided that a national bank stock assessment *does* bear interest.

This court first decided this question in 1876, in *Casey v. Galli*, 94 U. S. 673, where the opinion, found at the bottom of Page 677, states:

“... it follows that the amount bears interest from the date of the order. Otherwise, there would be no motive to pay promptly, and no equality between those who should pay then and those who should pay at the end of a protracted litigation.”

The point was again raised in this court in 1882, in *Bowden v. Johnson*, 107 U. S. 251, where the matter was disposed of in a one-sentence paragraph of two lines (page 263), reading:

“The liability of defendant bears interest from the date of said letter, August 13, 1875. *Casey v. Galli*, 94 U. S. 673.”

The point was never again presented to this court, so far as we have been able to find, until May 21, 1944, when these same petitioners raised it by filing a petition for a writ of mandamus against the District Judge. This petition was denied May 29, 1944; *Abbott v. Swinford*, 322 U. S. 714.

The point was recently presented to the Seventh Circuit in 1941, in *Garvey v. Wilder*, 121 F. (2d) 714, where the opinion written by Judge Evans at page 716 states:

“We are convinced, and so hold, that under the Federal authorities, interest liability attaches to national bank stock assessments.”

Petitioners urge two other "reasons" for the granting of the petition for writ of certiorari. They urge that the case presents an important and unsettled question of Federal law. The question may have been important but it is now settled by the decisions referred to above.

It is respectfully urged that the petition for writ of certiorari be denied.

Respectfully submitted,

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